148 FERC ¶ 61,082
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

July 31, 2014

In Reply Refer To:
Enbridge Energy, Limited Partnership
Docket No. OR14-33-000

Steptoe & Johnson LLP
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Attention: Steven Reed
Counsel for Enbridge Energy, Limited Partnership

Ladies and Gentlemen:

1. On June 24, 2014, Enbridge Energy, Limited Partnership (Enbridge Energy) filed a Supplement to the Facilities Surcharge Settlement (Supplement to FSM Settlement)[1] to permit it to add three components that will: (a) permit recovery of certain costs relating to Line 14 of Enbridge Energy's Lakehead system; (b) permit recovery of the remaining cost of service relating to certain previously agreed-upon integrity-related projects; and (c) recover the cost of service relating to 50 percent of the costs of certain agreed-upon integrity-related projects to be conducted by Enbridge Energy on its Lakehead system.[2] CAPP intervened in support of the filing.[3]

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[1] Enbridge Energy explains that it entered into a settlement with the Canadian Association of Petroleum Producers (CAPP) in 1998 (Original Settlement) that pre-dated the Facilities Surcharge Mechanism (FSM Settlement). The Commission approved the Original Settlement in *Lakehead Pipe Line Co., Limited P'ship*, 85 FERC ¶ 61,397 (1998); however, that settlement has expired. According to Enbridge Energy, the Commission approved the FSM in an order issued June 30, 2004. *Enbridge Energy, Limited P'ship*, 107 FERC ¶ 61,336 (2004) (FSM Settlement Order).

[2] Enbridge Energy designates the new projects as Projects 21, 22, and 23.

[3] CAPP is an association representing producers of essentially all of the crude petroleum transported by Enbridge Energy.

2. Pursuant to 18 C.F.R. § 385.602 (2013), Enbridge Energy seeks approval of the Supplement to Settlement by July 31, 2014. Enbridge Energy also asks for expedited consideration by the Commission so that the Facilities Surcharge can become effective at the same time as a related tariff filing including the new FSM levels that Enbridge Energy filed June 27, 2014, to be effective August 1, 2014.[4] If the Commission does not approve the Supplement to FSM Settlement by July 31, 2014, Enbridge Energy asks the Commission to accept it to be effective August 1, 2014, subject to potential refund of the new components.

3. Enbridge Energy states that, in the FSM Settlement Order, the Commission approved the Facilities Surcharge framework establishing it as a component of Enbridge Energy's U.S. tariff rates. Enbridge Energy explains that the Facilities Surcharge allows it to recover the costs associated with shipper-approved projects through an incremental surcharge added to the existing base rates. Enbridge Energy further states that the Facilities Surcharge is intended to be a transparent, cost-of-service-based tariff mechanism that it will true-up each year to actual costs and throughput, and, therefore, the Facilities Surcharge is not subject to indexing. Enbridge Energy emphasizes that it determines the projects to be included through a negotiating process with CAPP.

4. According to Enbridge Energy, when it adds new projects to the FSM, it trues-up the relevant costs for the previous year. If the tariff filed in Docket No. IS14-576-000 by Enbridge Energy becomes effective August 1, 2014, Enbridge Energy expects that the new components, as initially calculated under the terms negotiated between Enbridge Energy and CAPP, will be lower than the prior surcharge amount that was in place as of the pipeline's last tariff filing under the terms established in the FSM Order. Enbridge Energy estimates that the reduction will be approximately 28 cents per barrel (from 31 cents currently to about 3 cents in the new filing).

5. Enbridge Energy points out that the FSM will spread the costs for Projects 21, 22, and 23 among all shippers on its Lakehead system. Enbridge Energy further explains that over time, it will neither over-collect nor or under-collect the actual amounts, net of the agreed-upon adjustments, because the components will be trued-up annually to actual costs and throughputs. Additionally, Enbridge Energy explains that it negotiated with CAPP to establish specific parameters applicable to those Projects.

6. First, Enbridge Energy states that the Project 21 component will include the cost of service relating to: (a) the remaining previously agreed-upon costs associated with Line 14 that were not fully recovered under the Original Settlement (Legacy Line 14 Costs); (b) the costs of certain integrity work conducted on Line 14 in 2013 (2013

[4] Docket No. IS14-576-000. The filing is unopposed.

Addition); and (c) the future costs for ongoing integrity and minor replacements or modifications of Line 14 facilities (Line 14 Additions).[5] Further, states Enbridge Energy, it will recover the rate base associated with the Legacy Line 14 over a seven-year period. Enbridge Energy also points out that it will recover the rate base related to the 2013 Addition over a 22-year period, and from 2014 forward, the costs of any future Line 14 Additions will be rolled into the Project 21 component and recovered in the cost of service using a 30-year depreciable life as those projects occur.

7. Enbridge Energy next explains that the Project 22 component will include the cost of service relating to the remaining previously agreed-to integrity costs. According to Enbridge Energy, it will recover the rate base associated with the remaining legacy integrity costs over a period through 2035.

8. Enbridge Energy also states that the Project 23 component will include the cost of service related to 50 percent of the future agreed-upon integrity-related costs. According to Enbridge Energy, for a term of five years beginning in 2014, it will recover in its cost of service 50 percent of the future agreed-upon integrity-related costs using a 30-year depreciable life as those projects occur. Enbridge Energy further explains that it will absorb the remaining 50 percent of the future agreed-upon integrity-related costs. Enbridge Energy maintains that this component will exclude costs recovered through separately agreed-upon FSM projects. Finally, Enbridge Energy observes that these future costs negotiated with CAPP involve certain types of expenditures that it has undertaken from time to time, such as in-line inspections, hydrotesting, excavation and repair of buried pipe, and alterations to the system required by government and regulatory authorities, including compliance with industry-wide orders.

9. Notice of the filing was issued June 26, 2014, with interventions and protests due on July 9, 2014. Pursuant to Rule 214 of the Commission's regulations,[6] all timely-filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not delay or disrupt the proceeding or place additional burdens on existing parties. CAPP intervened in support of the filing, which is unopposed.

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[5] Enbridge Energy states that, in addition, certain agreed-to aspects of the surcharge previously in effect will be adjustments to the Project 21 component of the FSM, including: (a) the exclusion of the return on equity for $30 million of the Line 14 costs; (b) the recovery of 50 percent of the incremental power costs associated with the fact that a planned swap of the products transported on Line 1 and Line 13 never occurred; and (c) the sharing of certain incremental operating costs resulting from an increase in the reference temperature.

[6] 18 C.F.R. § 385.214 (2013).

10. The filing represents the collaborative efforts of Enbridge Energy and CAPP to identify projects appropriate for the FSM. This filing supports pipeline integrity while lowering the per-barrel surcharge. Moreover, the annual true-up eliminates the risk of over-collection from Enbridge Energy's shippers. Enbridge Energy has agreed to collect 50 percent of the costs of Project 23 (future integrity costs) through the surcharge so that it retains the risk of collecting the remaining 50 percent of the costs.

11. Inasmuch as this supplemental settlement filing is uncontested, and its approval would further the Commission's policy of favoring settlements as a means for parties to avoid litigation and thereby lessen the regulatory burdens of all concerned, the Commission approves the Supplement to FSM Settlement on the grounds that it appears fair, reasonable, and in the public interest. The Commission's approval of the Supplement to FSM Settlement does not constitute acceptance of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All parties